

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00  
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NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 IO-13  
ACDA-07 COME-00 SY-05 TRSE-00 MCT-01 NEA-10 DHA-02  
/091 W

-----001908 291319Z /46

O R 291055Z JUL 77  
FM USMISSION USBERLIN  
TO AMEMBASSY BONN IMMEDIATE  
INFO SECSTATE WASHDC IMMEDIATE 4991  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY PARIS  
USMISSION NATO

C O N F I D E N T I A L SECTION 1 OF 3 USBERLIN 1978

E.O. 11652: GDS  
TAGS: PGOV, BQG  
SUBJECT: TRIAL OF LORENZ DRENKMANN TERRORISTS IN BERLIN; ROLE  
OF FEDERAL PROSECUTOR IN BERLIN

REF: (A) BONN 12295, (B) BONN 12099, (C) USBERLIN 350, (D)  
76 BONN 13126, (E) 76 BONN 12111, (F) BONN 12426,  
(G) BONN 12441, (H) STATE 17700

SUMMARY: PRESS HAS ACTIVELY REPORTED RECENT EVENTS CONCERN-  
ING ISSUANCE OF 2 JUNE MOVEMENT INDICTMENTS. TO OUR DISMAY,  
BERLIN SENAT SPOKESMAN HAS COMMENTED WITHOUT HESITATION  
ON ALLIED ROLE IN INDICTMENTS AND HAS OFFERED REFUTATION  
OF NEUES DEUTSCHLAND CRITICISM OF ISSUANCE OF INDICTMENT  
BY FEDERAL PROSECUTOR AS VIOLATION OF QUADRIpartite  
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AGREEMENT OF 1971 (FULLER REPORT SENT SEPTTEL). DEFENSE  
COUNSELS HELD PRESS CONFERENCE REPORTING THEIR VIEW  
THAT ISSUANCE OF INDICTMENT BY FEDERAL PROSECUTOR IS A  
VIOLATION OF THE QUADRIpartite AGREEMENT AND THAT  
THEY WILL APPEAL TO ALLIES AND SOVIETS. END SUMMARY.

1. THE BERLIN OFFICIALS APPEAR TO HAVE BEEN AS INDISCREET

IN THIS MATTER AS THOSE IN KARLSRUHE. HENSCHEL, ACTING SPOKESMAN FOR THE BERLIN SENAT, HAS SPOKEN TO THE PRESS BOTH ON THE PARTICIPATION OF THE ALLIES IN THE DECISION TO ISSUE THE INDICTMENT, AND IN REFUTATION OF THE NEUES DEUTSCHLAND CRITICISM (REPORTED SEPTEL) OF THE ACTIONS OF THE FEDERAL PROSECUTOR. AS REPORTED 27 JULY IN TAGESSPIEGEL, HENSCHEL SAID THAT THE WESTERN ALLIES HAD AGREED TO (ZUGESTIMMT) THE INDICTMENT BEING BROUGHT BY THE FEDERAL PROSECUTOR'S OFFICE, AND THAT THIS AGREEMENT ALSO APPLIED TO HAVING THE PROSECUTION IN BERLIN. (NOTE: HENSCHEL CLAIMS TO HAVE BEEN MISQUOTED AND THAT HE REALLY SAID "ABGESTIMMT," I.E. THE ALLIES HAD BEEN CONSULTED.) WE BELIEVE IT WOULD HAVE BEEN MOST DESIRABLE IF THE ALLIED ROLE IN THIS MATTER HAD NOT BEEN PUBLICLY COMMENTED UPON BY SENAT SOURCES. FURTHER, WE CONSIDER THAT HENSCHEL'S REMARKS AS REPORTED THAT THE ALLIES HAD CONSENTED TO THE INDICTMENT'S BEING BROUGHT BY THE FEDERAL PROSECUTOR IS NOT ONLY INCORRECT (I.E., WE DID NOT OBJECT BUT WE DID NOT "AGREE TO") BUT POTENTIALLY TROUBLESOME. THE HENSCHEL REMARK CAN BE READ (BY DEFENSE COUNSEL FOR EXAMPLE) TO IMPLY AN ACTIVE AND CONTINUING ALLIED ROLE IN THE PROSECUTION. DEFENSE COUNSEL HAVE ALREADY DEMONSTRATED THAT THEY PLAN TO INVOLVE THE ALIES IN THEIR DEFENSE IN ANY WAY WHICH THEY CAN FIND USEFUL, AND THUS WE WOULD NOT BE SUR-CONFIDENTIAL

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PRISED IF THEY WERE TO RAISE SOME ARGUMENTS CONCERNING THE IMPROPRIETY OF ALLIED INVOLVEMENT IN THE PROSECUTION. AFTER DISCUSSION WITH THE BRITISH AND FRENCH MISSIONS, THE (BRITISH) CHAIRMAN SENAT LIAISON OFFICER INSTRUCTED THE SENAT TO REFRAIN FROM MENTIONING THE ALLIES OR FOUR POWER MATTERS IN ANY FURTHER STATEMENTS ON THIS MATTER.

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ACDA-07 COME-00 SY-05 TRSE-00 MCT-01 NEA-10 DHA-02  
/091 W

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O R 291055Z JUL 77  
FM USMISSION USBERLIN  
TO AMEMBASSY BONN IMMEDIATE  
INFO SECSTATE WASHDC IMMEDIATE 4992  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY PARIS  
USMISSION NATO  
AMEMBASSY BERLIN

C O N F I D E N T I A L SECTION 2 OF 3 USBERLIN 1978

2. AS REPORTED IN MORGENPOST 26 JULY, THE COUNSELS  
FOR THE 2 JUNE DEFENDANTS ANNOUNCED THAT ON ACCOUNT  
OF THE POLITICAL PROBLEMS RELATED TO THE FOUR POWER  
STATUS OF BERLIN THEY WILL SUBMIT A PROTEST AGAINST  
THE INDICTMENT IN BERLIN TO THE THREE WESTERN  
ALLIED COMMANDANTS AND THE SOVIET EMBASSY IN EAST  
BERLIN. THE ARTICLE STATES THAT DEFENSE COUNSEL  
CLAIMED THAT SOVIET AMBASSADOR ABRASIMOV HAD SOME  
WEEKS AGO ANNOUNCED THAT THE SOVIET UNION WILL OPPOSE  
THE BRINGING OF THE INDICTMENT IN BERLIN; HOWEVER,  
MORGENPOST WAS NOT ABLE TO CONFIRM THE STATEMENT  
ATTRIBUTED TO ABRASIMOV. WE HAVE NO INFORMA-  
TION ON THE ARGUMENTS DEFENSE COUNSEL WOULD MAKE IN  
SUPPORT OF THEIR CONTENTION THAT THE INDICTMENT LEGALLY  
OUGHT NOT OR CANNOT BE BROUGHT IN BERLIN. WE ASSUME,  
HOWEVER, THAT THEIR BEST ARGUMENT WOULD BE THAT TO  
DO SO IS AN EXERCISE OF DIRECT STATE AUTHORITY BY  
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THE FRG IN BERLIN AND ACCORDINGLY A VIOLATION OF THE  
QA AGREEMENT OF 1971.

3. WE NOTE IN 7TH POINT OF PARA 4 IN REFTTEL A, UK  
US AND FR REPS IN BONN GROUP ACKNOWLEDGED A POSSIBLE  
OVERSIGHT IN OUR NOT HAVING MADE CLEAR IN 1976 NON-  
PAPER (REF E) THAT THE INDICTMENT ITSELF WOULD HAVE  
TO BE SIGNED BY A MEMBER OF THE FEDERAL PROSECUTOR'S  
OFFICE PERMANENTLY ASSIGNED TO BERLIN, AND THAT  
ACCORDINGLY THOSE REPS WOULD NOT PRESS MATTER AT  
THIS TIME WITH FRG. IN USBER'S VIEW SIGNATURE OF  
INDICTMENT BY KARLSRUHE OFFICIAL (KAUL) RATHER THAN  
BY MEMBER OF PROSECUTOR'S OFFICE PERMANENTLY  
ASSIGNED TO BERLIN (E.G. OBERLE) SIGNIFICANTLY

WEAKENS POLITICAL DEFENSE OF OUR POSITION. IRONICALLY, HENSCHER'S REMARKS REPORTED ABOVE MAY BE OF SOME UTILITY IN THIS REGARD; HOWEVER, IN OUR OPINION ONLY FOR SUCH PRIVATE DISCUSSIONS WITH THE SOVIETS AS MAY BE NECESSARY AND NOT FOR PUBLIC DISSEMINATION. IN RESPONSE TO SOVIET COMPLAINTS THAT THE FEDERAL PROSECUTOR'S ACTIONS CONSTITUTE DIRECT STATE AUTHORITY, WE COULD RETORT THAT THE FEDERAL PROSECUTOR ACTS IN BERLIN ONLY AS PERMITTED BY THE ALLIES AND THAT HENSCHER'S REMARKS (AND PERHAPS THOSE OF FRG OFFICIALS) SERVE TO CONFIRM THAT THE FEDERAL PROSECUTOR WHEN ACTING IN BERLIN IS UNDER ALLIED CONTROL. FOR REASONS STATED IN PARAS 1 AND 2 THIS TELEGRAM WE WOULD NOT ADVISE MAKING SUCH A STATEMENT PUBLICLY.

4. WE HAVE BEEN TOLD BY UKBER LEGAL ADVISER THAT BRITISH ARE GIVING SOME THOUGHT TO HAVING FRG WITHDRAW INDICTMENT AND ISSUE NEW INDICTMENT UNDER SIGNATURE OF SOMEONE LIKE OBERLE, WHO IS MEMBER  
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OF OFFICE OF FEDERAL PROSECUTOR BUT PERMANENTLY ASSIGNED TO BERLIN. USBER BELIEVES THAT THE BONN GROUP SHOULD SERIOUSLY CONSIDER REQUESTING THAT THE FRG WITHDRAW THE INDICTMENT AS SIGNED BY KAUL IN KARLSRUHE AND HAVE IT REISSUED UNDER SIGNATURE BY SOMEONE IN BERLIN, SUCH AS OBERLE. AT FIRST BLUSH, THIS MAY SEEM A REVOLUTIONARY SUGGESTION; HOWEVER, WE BELIEVE THAT IT MERITS SERIOUS CONSIDERATION FOR THE FOLLOWING REASONS:

A. THE FRG'S COORDINATION OF THIS MATTER WITH US HAS BEEN TYPICALLY SPOTTY.

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-----002357 291319Z /46

O R 291055Z JUL 77

FM USMISSION USBERLIN

TO AMEMBASSY BONN IMMEDIATE

INFO SECSTATE WASHDC IMMEDIATE 4993

AMEMBASSY LONDON

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AMEMBASSY PARIS

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AMEMBASSY BERLIN

C O N F I D E N T I A L SECTION 3 OF 3 USBERLIN 1978

B. FRG AND SENAT OFFICIALS HAVE NOT ADHERED TO OUR  
CONDITION OF DISCRETION AND IN FACT THEIR REMARKS  
MAY HAVE INFLAMED THE SITUATION. THE ANTICIPATED  
SOVIET PROTEST IS LIKELY TO BE ESPECIALLY STRONG  
IN THE LIGHT OF THE FRG AND SENAT REMARKS.

C. WITHDRAWAL OF THE CURRENT INDICTMENT WITH IMMEDIATE  
REISSUANCE UNDER SIGNATURE ACCEPTABLE TO US WOULD  
IN OUR OPINION DO NO DAMAGE WHATSOEVER TO THE LEGAL  
PROCEEDINGS (AS A PRACTICAL MATTER, WE ASSUME THAT  
IT WOULD ONLY REQUIRE THE ALTERATION OF THE LAST  
PAGE, THE SIGNATURE PAGE).

D. SUCH AN ACTION WOULD DRIVE HOME TO THE FRG THE  
NECESSITY FOR TIMELY, PRECISE AND COMPLETE CONSULTA-  
TIONS WITH THE ALLIES ON BERLIN MATTERS, AND THE  
RISKS INVOLVED IN NON-COMPLIANCE WITH ALLIED  
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CONDITIONS. REFTEL (F) SUGGESTS NON-COMPLIANCE MAY, OTHERWISE,  
INTENSIFY.

E. SUCH AN ACTION WOULD GIVE US A VERY STRONG  
WEAPON TO USE IN RESPONSE TO A SOVIET PROTEST.  
IRONICALLY, HAD THE INDICTMENT FIRST BEEN SIGNED  
BY OBERLE, WE WOULD NOT BE ABLE TO ARGUE OUR CASE  
AS STRONGLY AS NOW, IF OBERLE WERE TO SIGN A NEW  
INDICTMENT.

5. ON PRESS STATEMENT: USBER REGARDS PARA 8, REFTEL (\*)  
TEXT AS SOUND, THOUGH WE SUGGEST IN ADDITION  
THAT THE STATEMENT NOTE THAT THE FEDERAL PROSECUTOR  
HAS ACTED PURSUANT TO LAW TAKEN OVER IN BERLIN BY  
MANTELGESETZ, A PROCEDURE IMPLICITLY SANCTIONED BY THE QA,  
AND THAT THEREFORE THE SOVIETS HAVE,

AS PARTIES TO THE QUADRIPARTITE AGREEMENT OF 1971  
SANCTIONED THIS ACTIVITY (SEPTTEL PROVIDES A FULLER  
REPORT). HOWEVER, WE WOULD PREFER THIS NOT  
BE USED IN A PUBLIC STATEMENT; OR, FAILING THAT,  
THAT WE NOT MAKE A PUBLIC STATEMENT EXCEPT AFTER  
REPEAT AFTER A PUBLIC STATEMENT IS MADE BY THE  
SOVIETS. THE PUBLIC INVITATION TO ABRASIMOV BY DEFENSE  
COUNSELS TO MEDDLE IN THIS MATTER SUGGESTS IT IS  
POSSIBLE THAT THE SOVIETS MAY GO PUBLIC. IF THEY  
WENT PUBLIC AFTER WE MADE THE SUGGESTED STATEMENT,  
THERE WOULD PROBABLY BE VERY LITTLE WE COULD SAY IN  
REFUTATION. IN ADDITION, IT SEEMS TO US PREFERABLE  
TO AVOID ENGAGING IN PUBLIC DISPUTES ON BERLIN WITH  
THE SOVIETS, IF AT ALL POSSIBLE. ACCORDINGLY, WE  
WOULD HOPE THAT REF (F) STATEMENT AS REVISED IN LIGHT  
OF SEPTTEL WOULD BE USED ONLY AS REPLY TO ANY SOVIET  
PROTEST RECEIVED IN NORMAL DIPLOMATIC CHANNELS.  
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IF THE SOVIETS DO GO PUBLIC, THEY WOULD HAVE CAST  
THE FIRST STONE, AND WE WOULD THEN BE FREE (OBLIGED)  
TO RESPOND. GEORGE

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** KIDNAPPING, PENAL SYSTEM, BERLIN QUADRIpartite MATTERS, POLITICAL TRIALS, TERRORISTS, COURT DECISIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Sent Date:** 29-Jul-1977 12:00:00 am  
**Decaption Date:** 01-Jan-1960 12:00:00 am  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1977USBERL01978  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Expiration:**  
**Film Number:** D770272-0681  
**Format:** TEL  
**From:** USBERLIN  
**Handling Restrictions:** n/a  
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**Legacy Key:** link1977/newtext/t1977072/aaaaabsb.tel  
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**Litigation History:**  
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**Message ID:** 83fa0d64-c288-dd11-92da-001cc4696bcc  
**Office:** ACTION EUR  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
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**Previous Channel Indicators:** n/a  
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**Reference:** 77 BONN 12295, 77 BONN 12099, 77 USBERLIN 350  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
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**Review Exemptions:** n/a  
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**Review Release Event:** n/a  
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**SAS ID:** 1751742  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** TRIAL OF LORENZ DRENKMANN TERRORISTS IN BERLIN; ROLE OF FEDERAL PROSECUTOR IN BERLIN  
**TAGS:** PGOV, PINS, BQG  
**To:** BONN  
**Type:** TE  
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**Review Markings:**  
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